



Linda S. Adams
*Secretary for
Environmental Protection*

California Regional Water Quality Control Board San Francisco Bay Region

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Arnold Schwarzenegger
Governor

January 20, 2010
CIWQS Place ID 738457
CIWQS Party ID 509034
CIWQS Party ID 509035
File No. 43S1102 (LMM)

Mr. Hyung Keun Sun and Mrs. Yeo Nam Sun
522 Providence Drive
Castle Rock, CO 80108

Subject: Administrative Civil Liability Order R2-2010-0003

Dear Mr. and Mrs. Sun:

Enclosed please find Administrative Liability Order No. R2-2010-0003. This Order requires payment of the \$25,646 liability in full to the Water Board by February 17, 2010. Please submit the payment via certified mail to the following address:

San Francisco Bay Regional Water Quality Control Board
Attn : Laurent Meillier
1515 Clay Street, Suite 1400
Oakland, CA 94612

Your check must be made payable to "San Francisco Bay Regional Water Quality Control Board." Please include Order No. R2-2010-0003 on your payment so we may credit it correctly.

If you have any questions, please contact Laurent Meillier of my staff at (510) 622-3277 or via email to LMeillier@waterboards.ca.gov.

Sincerely,

Bruce H. Wolfe
Executive Officer

Enclosures: Administrative Civil Liability Order No. R2-2010-0003

California Environmental Protection Agency

Cc (via email):

SWRCB, Office of the Chief Counsel – Dorothy Dickey
SWRCB, Division of Water Quality – Bruce Fujimoto
SWRCB, Office of Enforcement – Reed Sato
Regional Water Board Lyris email list

Mr. George Cook
Santa Clara Valley Water District
GCook@valleywater.org

Ms. Nicole Pullman
Santa Clara County Department of Environmental Health
Nicole.Pullman@deh.co.sci.ca.us

Napp Fukuda
City of San Jose
Napp.Fukuda@sanjoseca.gov

**CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION**

ORDER NO R2-2010-0003

ORDER SETTING ADMINISTRATIVE CIVIL LIABILITY FOR:

**HYUNG KEUN SUN AND YEO NAM SUN
400 EAST SANTA CLARA STREET
SAN JOSE, SANTA CLARA COUNTY**

This Order for Administrative Civil Liability (“Order”) is issued in reference to an adjudicative proceeding initiated by the issuance of Administrative Civil Liability Complaint No. R2-2009-0048, dated October 15, 2009 (“Complaint”) (Attachment 1). This Order is issued pursuant to California Water Code (“CWC”) sections 13268 and 13323. The parties to this proceeding are the California Regional Water Quality Control Board, San Francisco Bay Region’s (“Regional Water Board’s”) Prosecution Team and the Dischargers. The Complaint proposes to assess a total liability of \$25,646 against Mr. Hyung Keun Sun and Mrs. Yeo Nam Sun (“Dischargers”) for violating two CWC section 13267 orders by failing to timely submit the technical reports required by the orders.

The Regional Water Board finds that:

1. The Dischargers owned the property located at 400 East Santa Clara Street, San Jose (“Site”), during the relevant violation period.
2. On February 21, 2008, the Executive Officer issued a CWC section 13267 order requiring the Dischargers to submit a Site Investigation Workplan by March 31, 2008, and a Site Investigation Completion Report by June 15, 2008. These reports are essential for determining the extent of contamination at the Site, and failure to submit the reports is delaying Site cleanup. Regional Water Board staff mailed the February 21, 2008, 13267 order by certified mail, and received a return receipt confirming delivery to the Dischargers. To date, the Dischargers have not submitted the required technical reports.
3. On December 9, 2008, Regional Water Board staff issued a Notice of Violation (“NOV”) to the Dischargers. The NOV stated that Regional Water Board staff had not received the Site Investigation Work Plan required by the February 2008 13267 order, and informed the Dischargers to submit it. Regional Water Board staff mailed the NOV by certified mail, and received a return receipt confirming delivery to the Dischargers. To date, the Dischargers have not submitted the required Site Investigation Work Plan or responded to the NOV.

4. On April 7, 2009, the Executive Officer issued another CWC section 13267 order to the Dischargers requiring submittal of a Site History Technical Report by May 15, 2009. Regional Water Board staff mailed the April 7, 2009, CWC section 13267 order by certified mail, and received a return receipt confirming delivery to the Dischargers. To date, the Dischargers have not submitted the required Site History Technical Report.
5. On October 15, 2009, the Regional Water Board's Assistant Executive Officer issued the Complaint. The Complaint alleges that the Dischargers violated CWC section 13267 by failing to submit both the required Site Investigation Work Plan from the February 21, 2008, order, and the Site History Technical Report from the April 7, 2009, order. The Complaint proposes administrative civil liability of \$25,646 for these two violations.
6. The Complaint correctly alleges and the Regional Water Board finds that the Dischargers violated two CWC section 13267 orders dated February 21, 2008, and April 7, 2009, sent via certified mail, with receipts confirmed. Specifically, the Dischargers failed to timely submit the required Site Investigation Work Plan and Site History Technical Report.
7. Pursuant to CWC section 13268(b)(1), the Regional Water Board can impose a maximum civil liability for a violation in the amount of \$1,000 for each day in which there is a violation of CWC section 13267. Based on a finding that the Dischargers violated CWC section 13267, this Order imposes civil liability for the two violations that occurred for a total of 564 days during the period from April 1, 2008, through August 1, 2009, for failing to submit the required Site Investigation Work Plan and Site History Technical Report. The statutory maximum limit of the liability is \$564,000.
8. In imposing administrative civil liability, the Regional Water Board has considered each of the factors prescribed in CWC section 13327. The Regional Water Board's consideration of these factors is based upon information obtained by the Regional Water Board in investigating the allegations in the Complaint (Attachment 1) or otherwise provided to the Regional Water Board. In addition to these factors, the administrative civil liability recovers staff costs the Regional Water Board incurred for this matter.
9. This Order only resolves liability that the Dischargers incurred from April 1, 2008, through August 1, 2009, for the two violations specifically alleged in the Complaint, and does not relieve the Dischargers of liability for any violations not alleged in the Complaint.
10. This Order is an action to enforce the laws and regulations administered by the Regional Water Board. Issuance of this Order is exempt from the provisions of the California Environmental Quality Act (Public Resources Code, sections 21000 et seq.), in accordance with section 15321(a)(2), Title 14, of the California Code

of Regulations.

11. A hearing on this matter was held before the Regional Water Board on January 13, 2010, at the Elihu M. Harris State Building, 1515 Clay Street, Oakland. The Dischargers, or the Dischargers' representative(s), had the opportunity to be heard and to contest the allegations in the Complaint, which recommended the imposition of civil liability by the Regional Water Board.

IT IS HEREBY ORDERED, pursuant to section 13268 of the California Water Code, that:

1. An administrative civil liability of \$25,646 is imposed against the Dischargers for violating CWC section 13267 as found above; and
2. The Dischargers shall pay the sum of \$25,646 in full to the State Water Resource Control Board's Waste Discharge and Permit Fee Account within 30 days of the date this Order is adopted, unless review is sought under CWC sections 13320 and 13330.

I, Bruce H. Wolfe, Executive Officer, do hereby certify that the foregoing is a full, complete, and correct copy of an Order adopted by the Regional Water Board on January 13, 2010.

Bruce H. Wolfe
Executive Officer

Attachment 1: Administrative Civil Liability Complaint No. R2-2009-0048, including errata sheet

STATE OF CALIFORNIA
CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD
SAN FRANCISCO BAY REGION

COMPLAINT NO. R2-2009-0048

ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
FAILURE TO SUBMIT REQUIRED TECHNICAL REPORTS
HYUNG KEUN SUN AND YEO NAM SUN
DOING BUSINESS AS ART CLEANERS
400 EAST SANTA CLARA STREET
SAN JOSE, SANTA CLARA COUNTY

This Complaint is issued to Mr. Hyung Keun Sun and Mrs. Yeo Nam Sun (“Dischargers”) pursuant to California Water Code (“CWC”) section 13268(b)(1) which authorizes the California Regional Water Quality Control Board, San Francisco Bay Region (“Regional Water Board”) to impose administrative civil liability, and CWC section 13323, which authorizes the Executive Officer to issue this Complaint. The Complaint addresses Dischargers’s failure to submit required technical reports for a cumulative period of 564 days between April 1, 2008 and August 1, 2009, and assesses \$25,646 in penalties.

The Assistant Executive Officer of the Regional Water Board hereby gives notice that:

1. The Regional Water Board is required to regulate the amount of waste that may be discharged to waters of the state pursuant to CWC section 13263. The term “waters of the state” includes all surface water and groundwater within the state. (CWC section 13050(d)).
2. CWC section 13267 authorizes the Regional Water Board to investigate and to require technical or monitoring reports from any person who has discharged, discharges, or is suspected of having discharged or discharging, or who proposed to discharge waste to the waters of the state.
3. Art Cleaners is alleged to have violated provisions of the law for which the Regional Water Board may impose civil liability pursuant to CWC section 13268. This Complaint proposes to assess \$25,646 in penalties for the violations cited based on the considerations described herein.
4. The Regional Water Board will hold a hearing on this matter on January 13, 2010, in the Elihu M. Harris State Building, First Floor Auditorium, 1515 Clay Street, Oakland, California, 94612. You or your representative will have an opportunity to be heard and to contest the allegations in this complaint and the imposition of civil liability by the Regional Water Board. You will be mailed an agenda approximately ten days before the hearing date.
5. At the hearing, the Regional Water Board will consider whether to affirm, reject, or modify the proposed administrative civil liability, to refer the matter to the Attorney General for

recovery of judicial civil liability, or take other enforcement actions. The Discharger may waive its right to a hearing to contest the allegations contained in this Complaint by submitting a signed waiver and paying the civil liability in full as described in the attached waiver form.

6. You must submit any written evidence concerning this complaint to the Regional Water Board not later than 5 pm on November 16, 2009. The Regional Water Board will not accept or respond to any written evidence submitted after this deadline.
7. The deadline for written comments on this Complaint is October 26, 2009, at 5 p.m.

ALLEGATIONS

The Dischargers have not submitted an acceptable plan for investigating and addressing hydrocarbons and volatile organic carbon contamination despite multiple requests by the Santa Clara Valley Water District (SCVWD) and the Regional Water Board. Dischargers have not responded adequately to three CWC section 13267 orders requiring technical reports issued by the Regional Water Board in the February 21, 2008, December 9, 2008, and April 7, 2009, letters sent via certified mail to the Dischargers.

8. The following facts are the basis of the alleged violations in this matter:
 - a. The Dischargers own the property (“Site”) located at 400 East Santa Clara Street, San Jose, Santa Clara County, in the State of California. The Site was historically an automotive service station and is presently a dry cleaning facility named Art Cleaners, operated by Mr. Douglas Kay (“Operator”).
 - b. In September 2002, PIERS Environmental Services Inc. completed their subsurface investigation of the Site. The investigation determined that the Site is contaminated by petroleum hydrocarbons, tetrachloroethylene (PCE), and likely by PCE’s associated breakdown products.¹ Between December 2002 and June 2005, SCVWD attempted to work with the Discharger to complete investigation and cleanup of the Site. For that purpose, SCVWD required the Dischargers to submit environmental investigation workplans. Following these requests, in February 2003 and April 2004, the Dischargers submitted two separate investigation workplans.² However, the work outlined in these two workplans was not implemented. Following programmatic changes, SCVWD transferred oversight of the Site to the Regional Water Board on June 10, 2005.
 - c. On August 9, 2007, to facilitate regulatory oversight, Regional Water Board staff issued a letter requesting the Dischargers to voluntarily enter into the Water Board’s Site

¹PIERS Environmental Services, Inc. Work Plan, Phase II Subsurface Investigation Report, 400 East Santa Clara Street, San Jose, California. September 23, 2002.

²Golden Gate Removal, Inc. Workplan for Additional Soil & Groundwater Investigation. Art Cleaners 400 East Santa Clara Street, San Jose, California. February 28, 2003. ICES. Work Plan, Phase III Site Investigation, 400 East Santa Clara Street, San Jose, California. April 28, 2004.

Cleanup Cost Recovery Program. CWC section 13304 allows the Regional Water Board to recover its reasonable expenses for overseeing the investigation and cleanup of illegal discharges, contaminated properties, and other releases adversely affecting or threatening to adversely affect the State's waters. The Site falls into the category for which the Regional Water Board staff may recover their oversight costs from the Dischargers. The Dischargers's participation in the Site Cleanup Program enables Regional Water Board staff to actively oversee the investigation and cleanup of the Site. The Dischargers have not responded to the Regional Water Board staff's letter.

- d. On February 21, 2008, the Executive Officer issued a CWC section 13267 order via certified letter requiring the Dischargers to submit a Site Investigation Workplan by March 31, 2008, and a Site Investigation Completion Report by June 15, 2008. These reports are essential in determining the vertical and lateral extent of environmental contamination at the Site. The Dischargers have yet to submit either report.
- e. On December 9, 2008, Regional Water Board staff issued a Notice of Violation ("NOV") to the Dischargers. The NOV states that Regional Water Board staff had not received the Site Investigation Workplan, and requires the Discharger to submit it as soon as possible. To date, staff has not received a written or verbal response to the NOV from the Discharger.
- f. On April 7, 2009, the Executive Officer issued, via certified letters, CWC section 13267 orders to the Dischargers and the Operator requiring each to submit their own technical report on the Site's history by May 15, 2009. On May 8, 2009, Regional Water Board staff received from the Operator a Site History Technical Report. The Dischargers have yet to submit their required Site History Technical Report and have not responded to the April 7, 2009, Order. A Site History Report from the Discharger is required because the Discharger may have information not currently available to the Operator.
- g. From information contained in the PIERS Phase I Environmental Site Assessment Report,³ Water Board Staff determined the following basic site history:
 - Prior to 1931: Residential housing.
 - 1932 - 1950: Auto service/repair station.
 - 1951 - 1965: Automobile sales lot.
 - 1966: A 2,700 square foot commercial building was constructed on the Site.
 - 1967 - present: Commercial dry cleaners.
 - November 1995 - present: Site owned by Mr. Hyung Keun Sun and Mrs. Yeo Nam Sun.
 - October 2006 - present: Dry cleaners on Site operated by Mr. Douglas Kay.⁴
- h. In 2009, Regional Water Board staff Nathan King called Mrs. Sun on the telephone and notified her that the Regional Water Board may instigate an enforcement action for the

³ PIERS Environmental Services, Inc. Phase I Environmental Site Assessment, 400 East Santa Clara Street, San Jose, California. September 11, 2002.

⁴ Douglas Kay. Art Cleaners, 400 East Santa Clara Street, San Jose, Santa Clara County Requirement for Technical Report on Site History, April 23, 2009.

Dischargers's failure to submit technical reports required pursuant to CWC section 13267. In 2009, Nathan King called Mr. Kay, the facility's operator, and confirmed that the facility was still in business at the Site. The Operator's Site History report submitted May 8, 2009, confirmed that Mr. Kay has operated the facility since October 4, 2006, under the business name of "Art Cleaners".

- i. The vicinity of the Site is generally occupied by commercial businesses along East Santa Clara Street and residential housing on the neighboring streets. Saint Patrick Elementary School is 0.1 miles northwest of the Site at 51 North 9th Street, San Jose. Horace Mann Elementary School, part of the San Jose Unified School District and serving grades K-5, is located 0.2 miles west at 55 North 7th Street.
- j. Contaminants sequestered in soils and groundwater may migrate to downgradient properties and unduly expose residents. Residents and school occupants located to the northwest downgradient of the Site may be exposed to these contaminants sequestered in soil gas and groundwater.
- k. The nearest surface water body, Coyote Creek, is located approximately 0.5 miles northeast of the Site. According to the San Francisco Bay Basin Water Quality Control Plan (Basin Plan)⁵, groundwater in this basin has the following designated beneficial uses: municipal, industrial process/service water supply and agricultural use. There are eight active water supply wells within a one-mile radius of the Site.
- l. The PIERS Environmental Services, Inc. Work Plan, Phase II Subsurface Investigation Report identified the possible presence of a buried underground storage tank at the Site.⁶ Additionally, the report indicated soil and groundwater contamination by chlorinated hydrocarbons and petroleum hydrocarbons, respectively. The report recommended that an additional subsurface investigation be conducted to determine if the contamination is associated with the dry cleaning business activities at the Site. Chlorinated hydrocarbon concentrations detected in soils were methylene chloride at 397 parts per billion (ppb) and tetrachloroethylene at 2,560 ppb. These concentrations exceed the 2008 Environmental Screening Levels for soils with a potential for leaching into groundwater used for commercial/industrial purposes.⁷ Gasoline, benzene, toluene, ethylbenzene and xylene were detected in groundwater samples at the respective concentrations of 19,300 ppb, 4.6 ppb, 296 ppb, 114 ppb, 438 ppb. These detections exceed (by up to two orders of magnitude) the 2008 Environmental Screening Levels for gross contamination and, in the case of benzene, for drinking water at sites used for commercial/industrial purposes.⁸ The contaminant

⁵ http://www.waterboards.ca.gov/sanfranciscobay/basin_planning.shtml

⁶ PIERS Environmental Services, Inc. Work Plan, Phase II Subsurface Investigation Report, 400 East Santa Clara Street, San Jose, California. September 23, 2002.

⁷ Screening For Environmental Concerns at Sites with Contaminated Soil and Groundwater (Interim Final - May 2008). Values based on screening for shallow soils (less than 3 meters bgs), commercial/industrial land use and groundwater is a current or potential drinking water resource. Values from the Water Board Interim Final Screening for Environmental Concerns at Sites with Contaminated Soil and Groundwater, Volume 2, Table A-2 (May 2008). Soils ESLs are 77 ppb for methylene chloride and 700 ppb for tetrachloroethylene.

⁸ *Id.* Values based on screening for groundwater, commercial/industrial land use and groundwater is a current or potential drinking water resource. Values from the Water Board Interim Final Screening for Environmental

concentrations detected in groundwater may adversely affect human health via an inhalation and/or ingestion exposure pathway.

- m. As of August 1, 2009, the Dischargers have violated CWC section 13267 for a total of 564 days of violation for which the Regional Water Board may impose administrative civil liability. From April 1, 2008, through August 1, 2009, Dischargers have failed to submit the Site Investigation Workplan for 487 days. Between May 16, 2008, and August 1, 2009, the Dischargers have failed to submit the Site History Technical Report for 77 days. As of October 15, 2009, the date of this Complaint, Dischargers have yet to submit any of these two required reports.

PROPOSED CIVIL LIABILITY

- 9. Pursuant to CWC section 13268(b)(1), the Regional Water Board can impose a maximum civil liability for a violation in the amount of \$1,000 for each day in which the violation occurs. This Complaint addresses two violations that occurred for a total of 564 days during the period from April 1, 2008, through August 1, 2009 for failing to submit the required technical reports. The statutory maximum limit to the liability is estimated at \$564,000.
- 10. Under CWC section 13351, the Regional Water Board shall consider the following factors in determining the amount of civil liability to be imposed:
 - a. The nature, circumstances, extent, and gravity of the violation:

Staff is unable to assess the full nature, extent, and gravity of impacts to water quality associated with the Dischargers's failure to submit the required technical reports because the reports are a key means of determining the nature, circumstances, extent and gravity of the violations upon water quality and human health. Regional Water Board staff need the required reports to evaluate the extent of contamination in the soil and groundwater, and subsequently to evaluate the optimal method(s) with which to arrest and remediate contamination. By nature of this violation, the delay in submitting the required information is causing delays in cleaning up any pollution that may be required, thereby putting water quality and human health at further risk.

Chlorinated hydrocarbons sequestered in soils are known to leach into groundwater and soil gas. The soil gas fraction may have migrated in gaseous phase into buildings at and near the Site, potentially exposing their occupants to significant levels of toxic airborne contaminants. Potential harm to schoolchildren and/or residents is a significant concern and is an aggravating factor in the Dischargers' lack of responsiveness. Toxicant concentrations in groundwater detected in 2002 at the Site exceed 2008 screening levels, and have the potential to adversely affect human health through viable exposure routes.

The contaminants known or believed to be present at the Site threaten beneficial uses (municipal, agricultural and industrial) of Waters of the State.

The Dischargers were notified numerous times of their failure to submit the three required technical reports, but Dischargers neither submitted the reports nor responded to the notifications.

b. Toxicity of Discharge

The violations for which liability is proposed are a failure to submit three required technical reports. Civil liability is not proposed for a specific discharge or discharges, although the technical reports are required to include information on the amounts and/or presence of certain discharged pollutants, as well as information on remedial actions to be taken by the Dischargers to halt, minimize, and/or clean up polluted discharges at the Site.

c. Susceptibility to Cleanup

Contamination cannot be effectively cleaned up until the nature and extent of the impacts are known. Without information on the extent of soil and groundwater contamination, it is not possible to make a more specific determination on this factor.

d. Voluntary cleanup efforts:

Similarly, without the Dischargers's reports, it is not possible to make any specific determination on this factor.

e. Discharger's ability to pay:

The Dischargers own the Site, on which a dry cleaning facility is presently operated. As of June 2009, according to the Santa Clara County Tax Assessor, the Site had an estimated value of \$505,893. Further, it appears the Site is a source of income to the Dischargers, who lease it to the dry cleaning facility Operator. The Discharger owns a property in Colorado assessed at \$842,764 as of July 27, 2009. Based on these facts, it appears that the Dischargers will be able to pay the proposed civil liability. As described below, as part of its response to this Complaint, the Dischargers may submit additional information on this issue.

f. Prior history of violations:

The Dischargers have a demonstrated pattern of non-responsiveness to requests and requirements associated with investigating and proposing to clean up contamination at the Site as discussed below:

- i. The September 23, 2002 Phase II Subsurface Investigation Report by PIERS Environmental Services, Inc.,⁹ reported soil samples with concentrations of chlorinated hydrocarbons, PCE, methylene chloride and gasoline, all in concentrations above acceptable levels. On December 12, 2002, SCVWD issued a letter to the Discharger requiring the Discharger to conduct a fuel leak and dry cleaning solvent investigation to delineate the extent of petroleum and chlorinated

⁹ PIERS Environmental Services, Inc. Work Plan, Phase II Subsurface Investigation Report, 400 East Santa Clara Street, San Jose, California. September 23, 2002.

hydrocarbon contamination in soils and groundwater at the Site. On January 17, 2003, Mr. Sun sent a letter to SCVWD requesting a delay of three weeks for submitting the soil and water investigation workplan. SCVWD did not contest the Discharger's request for a three week delay.

- ii. On February 28, 2003, the Dischargers's consultant issued a workplan outlining the proposed Site investigation.¹⁰ SCVWD approved the workplan in a letter issued on March 21, 2003. This letter requested the submittal of a Soil and Groundwater Investigation report by June 27, 2003. However, the Dischargers never completed the action items in the workplan.
- iii. On February 3, 2004, and March 15 2004, SCVWD issued two letters to the Dischargers requiring the completion of the proposed workplan and the submittal of the Soil and Groundwater Investigation report originally due on June 27, 2003.
- iv. In April 2004, the Dischargers's hired consultant issued a Phase III Site Investigation Workplan.¹¹
- v. On May 25, 2004, in response to the proffered Phase III Site Investigation Workplan, SCVWD issued a letter to the Dischargers authorizing the installation and sampling of three groundwater monitoring wells at the Site. SCVWD's letter required that Dischargers submit a Soil and Water Investigation Report by August 27, 2004.
- vi. On September 13, 2004, and December 8, 2004, SCVWD issued two letters to the Dischargers for not submitting the required Soil and Water Investigation Report that was due August 27, 2004.
- vii. On June 10, 2005, SCVWD transferred Site oversight to the Regional Water Board.

The Dischargers have failed to submit technical reports requested by the SCVWD on time. The Dischargers submitted the Soil and Water Investigation Workplan to SCVWD on March 13, 2003, which was 45 days late. In its March 15, 2004 letter to Mr. Hyung Keun Sun and Mrs. Yeo Nam Sun, SCVWD noted that the Discharger was 8 months late in submitting the Soil and Groundwater Investigation Report.⁷ The report was submitted 306 days late on April 28, 2004. In its December 2004 letter, SCVWD noted that the Discharger's Soil and Water Investigation Report was 104 days late and had not yet been submitted. From May through December 2004, SCVWD requested this Soil and Water Investigation Report on three separate instances. This report was never submitted.

g. Degree of culpability:

The Discharger is fully culpable for violating CWC section 13267 by failing to submit the required technical reports. Despite two written and two telephone reminders by

¹⁰ Golden Gate Removal, Inc. Workplan for Additional Soil & Groundwater Investigation. Art Cleaners 400 East Santa Clara Street, San Jose, California. February 28, 2003.

¹¹ ICES. Work Plan, Phase III Site Investigation, 400 East Santa Clara Street, San Jose, California. April 28, 2004.

Regional Water Board staff, the Discharger did not respond to the 13267 order requirements specified in the February 21, 2008, and December 9, 2008, letters from the Regional Water Board Executive Officer.

h. Dischargers's economic benefit from the violations:

The Discharger has realized cost savings by: failure to submit the technical reports, failure to perform required sampling and analyses, and failure to determine the extent of environmental impacts caused by discharges from the Site. Regional Water Board staff estimates the minimum economic savings for avoiding submitting the technical reports to be \$9,646. These estimates are based on consulting industry average investigative costs for a site of similar size and complexity.

i. Other matters that justice may require:

Staff time to prepare the Complaint and supporting information is estimated at 40 hours. Based on an average cost to the State of \$150 per hour, the staff cost is \$6,000.

Regional Water Board staff determined that the Dischargers were not responsive to submittal requests made by the SCVWD and the Regional Water Board. Furthermore, the Dischargers have failed to submit the Soil and Water Investigation Report due to the SCVWD on January 31, 2005. As of August 1, 2009, this report is 1,642 days late. The Dischargers have demonstrated a pattern of non responsiveness to regulatory agencies vested to protect human and ecological health.

If this matter proceeds to hearing, the Assistant Executive Officer reserves the right to amend the proposed amount of civil liability to conform to the evidence presented, including but not limited to increasing the proposed amount to account for the costs of enforcement (including staff, legal and expert witness costs) incurred after the date of the issuance of this complaint through completion of the hearing.

11. The Assistant Executive Officer of the Regional Water Board proposes that an administrative civil liability be imposed in the amount of \$25,646. Of this amount, \$6,000 is for recovery of staff costs. The proposed liability was derived using CWC section 13351 factors as a guide, as well as the monetary assessment guidance set forth by the State Water Resources Control Board's Enforcement Policy.
12. Claims of inability to pay must be substantiated by adequate proof of financial hardship (e.g., three years of income tax returns, an audited financial statement and/or other information, as appropriate). This procedure is provided in more details in the "Administrative Civil Liability Fact Sheet."
13. Further failure to comply beyond the date of this Complaint may subject the Dischargers to further administrative civil liability, and/or other appropriate enforcement actions(s), including referral to the Attorney General.
14. Issuance of this Complaint is exempt from the provisions of the California Environmental Quality Act (Public Resources Code 21000 et seq.) in accordance with Section 15321 of Title 14, California Code of Regulations.

Dyan C. Whyte
Assistant Executive Officer

October 15, 2009
Date

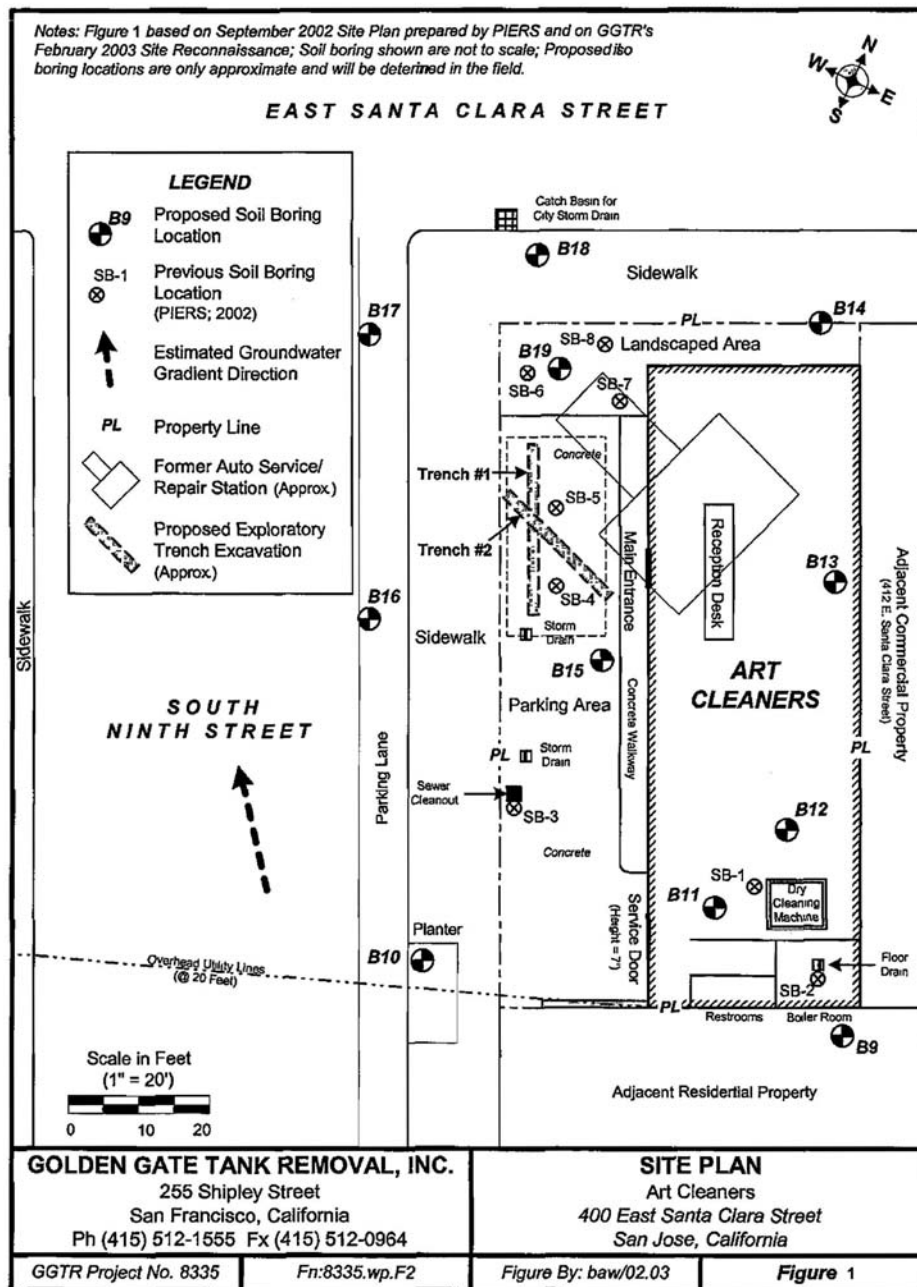


Figure 1: Site Plan

**WAIVER OF HEARING
WAIVER FORM
FOR ADMINISTRATIVE CIVIL LIABILITY COMPLAINT**

By signing this waiver, I affirm and acknowledge the following:

I am duly authorized to represent Mr. Hyung Keun Sun and Mrs. Yeo Nam Sun (hereinafter “Dischargers”) in connection with Administrative Civil Liability Complaint No. R2-2009-0048 (hereinafter the “Complaint”). I am informed that California Water Code section 13323, subdivision (b), states that, “a hearing before the regional board shall be conducted within 90 days after the party has been served with the complaint. The person who has been issued a complaint may waive the right to a hearing.”

☐ (**OPTION 1: Check here if the Dischargers waive the hearing requirement and will pay the liability in full.**)

- a. I hereby waive any right the Dischargers may have to a hearing before the Regional Water Board.
- b. I certify that the Dischargers will remit payment for the proposed civil liability in the full amount of **twenty five thousand six hundred and forty six dollars (\$25,646)** by check that references “ACL Complaint No. R2-2009-0048.” made payable to the “*State Water Pollution Cleanup and Abatement Account.*” Payment must be received by the Regional Water Board by September 21, 2009 or the Regional Water Board may adopt an Administrative Civil Liability Order requiring payment.
- c. I understand the payment of the above amount constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board’s Prosecution Team) during this comment period, the Regional Water Board’s Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer of the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Dischargers having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Dischargers to further enforcement, including additional civil liability.

☐ (**OPTION 2: Check here if the Dischargers waive the 90-day hearing requirement in order to engage in settlement discussions.**) I hereby waive any right the Dischargers may have to a hearing before the Regional Water Board within 90 days after service of the complaint, but I reserve the ability to request a hearing in the future. I certify that the Dischargers will promptly engage the Regional Water Board Prosecution Team in settlement discussions to attempt to resolve the outstanding violation(s). By checking this box, the Dischargers request that the Regional Water Board delay the hearing so that the Dischargers and the Prosecution Team can discuss settlement. It remains within the discretion of the Regional Water Board to agree to delay the hearing. Any proposed settlement is subject to the conditions described above under “Option 1.”

☐ (**OPTION 3: Check here if the Dischargers waive the 90-day hearing requirement in order to extend the hearing date and/or hearing deadlines. Attach a separate sheet with the amount of additional time requested and the rationale.**) I hereby waive any right the Dischargers may have to a hearing before the Regional Water Board within 90 days after service of the complaint. By checking this box, the Dischargers requests that the Regional Water Board delay the hearing and/or hearing deadlines so that the Dischargers may have additional time to prepare for the hearing. It remains within the discretion of the Regional Water Board to approve the extension.

☐ (**OPTION 4: Check here if the Dischargers waive the hearing requirement and will submit a proposed compliance project or supplemental environmental project. If the proposal is rejected, the Dischargers will pay the liability in full.**)

- a. I hereby waive any right the Dischargers may have to a hearing before the Regional Water Board.
- b. I certify that the Prosecution Team has authorized the Dischargers to submit a proposed Supplemental Environmental Project in lieu of payment of \$ 9,823 of the proposed civil liability. I agree to submit the proposal and the remainder of the proposed civil liability within 60 days of the date of the Complaint. I understand that the proposal must conform to the requirements specified in the State Water Resources Control Board's Water Quality Enforcement Policy. If I receive written notice from the Prosecution Team that the Dischargers has failed to timely submit a proposal or that the Prosecution Team has rejected the proposal, I certify that the Dischargers will remit payment of the proposed civil liability in the amount of nine thousand eight hundred twenty three dollars (**\$9,823**) check that references "ACL Complaint No. R2-2009-0048." made payable to the "*State Water Pollution Cleanup and Abatement Account*" within ten days of the notice. If payment is not timely received, the Regional Water Board may adopt an Administrative Civil Liability Order requiring payment.
- c. I understand the acceptance or rejection of the proposed [compliance project / supplemental environmental project and payment of the remainder of the proposed civil liability] constitutes a proposed settlement of the Complaint, and that any settlement will not become final until after the 30-day public notice and comment period. Should the Regional Water Board receive significant new information or comments from any source (excluding the Water Board's Prosecution Team) during this comment period, the Regional Water Board's Assistant Executive Officer may withdraw the complaint, return payment, and issue a new complaint. I understand that this proposed settlement is subject to approval by the Executive Officer of the Regional Water Board, and that the Regional Water Board may consider this proposed settlement in a public meeting or hearing. I also understand that approval of the settlement will result in the Dischargers having waived the right to contest the allegations in the Complaint and the imposition of civil liability.
- d. I understand that payment of the above amount is not a substitute for compliance with applicable laws and that continuing violations of the type alleged in the Complaint may subject the Dischargers to further enforcement, including additional civil liability.

(Print Name and Title)

(Signature)

(Date)

ERRATA SHEET

ADMINISTRATIVE CIVIL LIABILITY COMPLAINT NO. R2-2009-0048

**ADMINISTRATIVE CIVIL LIABILITY
IN THE MATTER OF
FAILURE TO SUBMIT REQUIRED TECHNICAL REPORTS
HYUNG KEUN SUN AND YEO NAM SUN
DOING BUSINESS AS ART CLEANERS
400 EAST SANTA CLARA STREET
SAN JOSE, SANTA CLARA COUNTY**

ACL COMPLAINT SENT OCTOBER 15, 2009

The following changes have been made to Administrative Civil Liability (ACL) Complaint No. R2-2009-0048. Changes below are shown in **bold and underline**/~~strikeout~~ format to indicate added and removed language, respectively. Changes are to correct typographic errors in the original Complaint.

Errata No.	Page/ Section	Revision	Basis for Revision
1	2/ 7.	The deadline for written comments <u>objections to the hearing procedure</u> on this Complaint is October 26, 2009, at 5 p.m.	This deadline corrects a typographic error. The deadline was stated correctly in the Public Notice and Hearing Procedure and the transmittal letter sent with the Complaint on October 15, 2009. The deadline for evidence and written comments was stated correctly in the Complaint immediately above this item and also in the transmittal letter and Public Notice and Hearing Procedure.
2	2/ Allegations	Dischargers have not responded adequately to three <u>two</u> CWC section 13267 orders requiring technical reports issued by the Regional Water Board in the February 21, 2008, December 9, 2008, and April 7, 2009, letters	Corrects typographic error.

Errata No.	Page/ Section	Revision	Basis for Revision
		sent via certified mail to the Dischargers.	
3	5/ 8.m.	Between May 16, 2008 2009 , and August 1, 2009, the Dischargers have failed to submit the Site History Technical Report for 77 days.	Corrects typographic error.
4	6/ 10.a.	The Dischargers were notified numerous times of their failure to submit the three <u>two</u> required technical reports, but Dischargers neither submitted the reports nor responded to the notifications.	Corrects typographic error.
5	6/ 10.b.	The violations for which liability is proposed are a failure to submit three <u>two</u> required technical reports.	Corrects typographic error.
6	7-8/ 10.g.	Despite two written and two telephone reminders by [page break]Regional Water Board staff, the Dischargers did not respond to the 13267 order requirements specified in the February 21, and December 9, 2008 <u>April 7, 2009</u> , letters from the Regional Water Board Executive Officer.	Corrects reference to wrong letter.
7	Several locations in the document	Dischargers	Corrects typographical error to make the term consistent with the definition on page 1 of the ACL Complaint.